

Federal Court



Cour fédérale

Date: 20251104

Docket: IMM-15923-24

Citation: 2025 FC 1779

Ottawa, Ontario, November 4, 2025

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

EMIR CAN ERLER

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision [the Decision] of the Refugee Protection Division [RPD] dated August 1, 2024, rejecting the Applicant's claim for refugee protection.

[2] As explained in greater detail below, this application for judicial review is allowed, because the RPD unreasonably arrived at an adverse credibility determination based on a lack of corroborative evidence, without a reasonable basis to expect the Applicant to have adduced such evidence.

II. **Background**

[3] The Applicant is a citizen of Turkey of Kurdish ethnicity. He left Turkey on January 25, 2023, and, after travelling through Mexico and the United States, claimed protection in Canada on January 31, 2023. He asserts a fear of persecution in Turkey on the grounds of his Kurdish ethnicity and political opinion, including due to his support for the People's Democratic Party [HDP].

[4] The Applicant's claim for refugee protection was heard by the RPD in January and June 2024. As summarized by the RPD in its Decision, the Applicant alleges the following events in support of his asserted fear:

A. On November 9, 2005, there was a bomb attack by two Turkish military men where the claimant's father's shop was located. His father and his father's friend were injured. The perpetrators were never brought to justice, but his father and other shopkeepers were arrested, assaulted and threatened.

B. Around 2012 or 2013, when the Applicant was about twelve or thirteen, he was walking home from school when he was almost run over by police, who then exited the vehicle

and started beating him. His mother came, and the police started hitting her too. People gathered around, and the police left.

- C. On December 6, 2016, the Applicant's father, his father's friends, the municipality president and his wife, who was the HDP president, were arrested, beaten and detained for a week. They were accused of membership in a terrorist organization. The police raided the Applicant's house, seized electronics, and arrested the Applicant and his father. At the station, the Applicant was questioned about his father and released same day.
- D. On August 7, 2017, the Applicant's family's house was raided by police and the Applicant and his two maternal uncles were dragged to the mosque where they were beaten and arrested. They were also beaten in detention and released the next day. The family sued the police officers involved in the raid and assaults. The Applicant alleged at the time of the RPD hearing that the trial was still ongoing.
- E. Sometime in 2022, the police raided the café where the Applicant was playing Kurdish music and singing. The police beat him, accusing him of promoting terrorism. The shop owner intervened, and the police left.
- F. Sometime in 2022, the claimant participated in a World Peace rally. On his way home, he was stopped by the police and warned against supporting the HDP. After this incident, the claimant decided to leave the country.

[5] On August 1, 2024, the RPD issued the Decision under review in this application, rejecting the Applicant's claim.

III. **Decision under Review**

[6] The RPD stated in the Decision that the determinative issue in the rejection of the Applicant's claim was credibility.

[7] The RPD first analysed the Applicant's allegations of persecution. After referencing evidence surrounding the December 2016 and August 2017 incidents, including letters from the Applicant's father and two of his uncles, the RPD appeared to accept that these incidents occurred. However, noting evidence that at the time of the latter incident there had been events in the area between the authorities and an illegal organization, which precipitated a mass raid by the authorities, the RPD did not believe that the police were specifically targeting the Applicant.

[8] In relation to the 2022 incident at the café where the Applicant was playing Kurdish music, the RPD noted that the Applicant did not recall when in 2022 this happened. The RPD also observed that, although both the Applicant's father and two of his uncles wrote letters in support of his claim, none of them mentioned anything about this incident. The RPD concluded that this incident did not take place.

[9] In relation to the 2022 incident at the World Peace rally, the RPD again noted that the Applicant did not remember when he attended the rally and that neither his father nor his uncles mentioned this incident in their letters. Again, the RPD concluded that this incident did not take place. The RPD further found in the alternative that, even if the incident did occur, the claimant was not arrested, detained or assaulted, and therefore did not experience persecution.

[10] The RPD then found that the Applicant had failed to provide sufficient credible, trustworthy and reliable evidence of any persecutory action after 2017.

[11] The RPD also observed that, when it asked the Applicant if the authorities had been looking for him following his departure from Turkey, he testified that the authorities asked about him once when they arrested and detained two of his uncles in 2023. The Applicant testified that his uncles were detained on his account, given that most of the questions were about him. The RPD asked him why the authorities would detain his uncles rather than his father, if it was on his account, and he replied that he did not know. The RPD also asked the Applicant if he considered getting letters from these two uncles, and he replied that he did not, as he considered the letters that he had submitted to be sufficient.

[12] However, the RPD also explained that, post-hearing, the Applicant submitted additional evidence including a letter from one of these uncles. After quoting from this letter, the RPD concluded from the police interaction described therein that the uncles were detained on their own account due to their affiliation with the HDP and not because of the Applicant. The RPD found that this evidence did not establish an ongoing interest in the Applicant, noting as well that neither the Applicant's father, the family lawyer, nor his uncles who had written letters on his behalf mentioned anything about the authorities looking for, or asking about, the Applicant.

[13] In conclusion on the Applicant's allegations of persecution, the RPD found that the Applicant had not established that the Turkish authorities were interested in him or had gone looking for him.

[14] The RPD then turned to the evidence of the Applicant's alleged political affiliation.

Although the Applicant testified that he assisted the HDP in their cultural and political events by arranging sound systems and teaching Kurdish music to Kurdish youth, the RPD noted that there was no letter from the HDP. While the Applicant stated that he thought his father's and uncles' letters would be sufficient, the RPD observed that these witnesses did not mention the Applicant's HDP affiliation or political activities.

[15] Noting that the Applicant also did not mention his HDP affiliation in his Basis of Claim form, the RPD found that the Applicant had failed to establish his political affiliation or activities and drew a negative inference with respect to his credibility.

[16] Turning to forward-facing risk, while the RPD found that the Applicant had been arrested in 2016 and 2017 as alleged, it concluded that these arrests occurred only because he happened to be in the house where his adult family members were arrested. The RPD was not satisfied that the Applicant had demonstrated a pattern of long-standing persecution or a serious possibility that he would face a risk of persecution on a forward-looking basis.

[17] The RPD then considered the Applicant's ethnic profile and relevant country condition evidence [CCE]. While it accepted that discrimination against the Kurdish population in Turkey existed, the RPD concluded based on the CCE that, absent overt antigovernment political activity, the Applicant would not be subject to serious, repetitive and systemic persecution due solely to his ethnicity.

[18] In conclusion, the RPD found that the Applicant was neither a Convention refugee nor person in need of protection.

IV. **Issues**

[19] The sole issue raised by the Applicant for adjudication by the Court is whether the Decision is reasonable. As suggested by that articulation, the reasonableness standard of review applies to the Court's review of the merits of the Decision.

V. **Analysis**

[20] While the Applicant advances number of arguments in support of his position that the Decision is unreasonable, my decision to allow this application for judicial review turns on the Applicant's arguments surrounding the RPD's credibility analysis.

[21] As noted above, the RPD stated that the determinative issue was credibility, and it is apparent from the Decision that the RPD's rejection of the Applicant's claim was materially influenced by its conclusion that the two incidents involving the Applicant in 2022 did not take place as alleged. That is, the RPD did not believe the Applicant's testimony related to those incidents.

[22] In relation to each of these incidents, the negative credibility determination resulted from a combination of the following two evidentiary points: (a) the Applicant was not able to recall

when in 2022 the incident happened; and (b) neither the Applicant's father nor his uncles mentioned anything about the incident in their supporting letters.

[23] On the first point, the Applicant argues that the RPD's analysis conflicts with jurisprudence to the effect that a refugee claim should not be determined on the basis of a memory test (*Sheikh v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 15200 (FC) at para 28) and that a claimant's failure to remember specific dates of an important event bears a tenuous connection to the claimant's credibility (*Adegbola v Canada (Citizenship and Immigration)*, 2007 FC 511 at para 31).

[24] In contrast, the Respondent emphasizes authorities in which a claimant's inability to remember key dates has been held to represent a reasonable basis for negative credibility findings (*Cortes v Canada (Citizenship and Immigration)*, 2016 FC 684 at para 20; *Lopez v Canada (Citizenship and Immigration)*, 2014 FC 102 at para 28).

[25] Regardless of which line of jurisprudence might be considered more applicable to the facts of the present case, the RPD's credibility determination is unreasonable because of the second aspect of its analysis, relying on the lack of corroborating evidence from his father or uncles. On this point, the applicable jurisprudence is clear that, although a refugee claimant is presumed to be truthful (*Maldonado v Minister of Employment and Immigration*, 1979 CanLII 4098 (FCA), [1980] 2 FC 302 (CA)) and it is an error to make an adverse credibility finding based solely on the absence of corroborative evidence (*Amarapala v Canada (Minister of Citizenship and Immigration)*, 2004 FC 12 at para 10), a decision-maker may draw an adverse

inference regarding a claimant's testimony if he or she fails to produce evidence that the decision-maker reasonably expects should be available in the claimant's circumstances, and the claimant does not provide a reasonable explanation for failing to produce that evidence (*Alvarez v Canada (Citizenship and Immigration)*, 2023 FC 541 at para 28).

[26] The difficulty with the RPD's reliance on the lack of corroborative evidence from the Applicant's father or uncles is that it was unreasonable to expect that such evidence should be available. As the Applicant submits, there is no indication that any of these family members witnessed the alleged incidents at the café or the World Peace rally in 2002. There is no basis to conclude that evidence from the family members with respect to either of these incidents would have had any probative value and therefore no reasonable basis to expect the Applicant to have adduced such evidence. It was therefore unreasonable for the RPD to impugn the Applicant's credibility based on the absence of corroboration from these individuals.

[27] Given the materiality of the resulting credibility determinations to the RPD's conclusion that the Applicant faced no forward-facing risk and the resulting rejection of his refugee claim, this flaw in the RPD's reasoning represents a reviewable error requiring that the Decision be set aside. This application for judicial review will therefore be allowed, and it is unnecessary for the Court to address the parties' submissions on the Applicant's other arguments challenging the Decision.

[28] Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-15923-24

THIS COURT'S JUDGMENT is that this application for judicial review is allowed, the Decision is set aside, and this matter is returned to a differently constituted panel of the RPD for redetermination. No question is certified for appeal.

"Richard F. Southcott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-15923-24

STYLE OF CAUSE: EMIR CAN ERLER v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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